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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RANDALL D. WILKERSON, JAMES R. FOX,
and ALEXANDER M. RUBIN

Appeal 2016-006141
Application 13/934,884¹
Technology Center 1700

Before MARK NAGUMO, GEORGE C. BEST, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from the Final Action of claims 1–20, 28, 29, 31, 32, and 35. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

¹ The real party in interest is identified as The Boeing Company of Chicago, Illinois. App. Br. 2.

Claim 1 is illustrative of the subject matter on appeal and is reproduced below:

1. Tooling used in a continuous process for forming laminated thermoplastic parts using a layup of laminate plies, comprising:

a body having first and second ends,

the body including a recessed area,

the first and second ends of the body extending beyond the recessed area; and

wherein a first length of the second end is greater than or equal to a second length of a consolidation station through which the tooling is configured to pass during operation of a continuous compression molding line.

Appellants request review of the Examiner's rejection of claims 1–20, 28, 29, 31, 32, and 35 rejected under 35 U.S.C. § 102(b) as anticipated by Suriano (US 2006/0011289 A1, published January 19, 2006). Final Act. 2; App. Br. 5.

Appellants argue independent claims 1, 11, and 28 together and do not present separate arguments for dependent claims 6, 9, 19, 29, and 35. *See* Appeal Brief, *generally*. Appellants, however, present separate arguments for claims 2–5, 7, 8, 10, 12–18, 20, 31, and 32. *Id.* Accordingly, we select claim 1 as representative of the subject matter before us on appeal. 37 C.F.R. § 41.37(c)(1)(iv) (2014). Claims 6, 9, 11, 19, 28, 29, and 35 stand or fall with claim 1. Claims argued separately will be addressed separately.

OPINION

Prior Art Rejection under 35 U.S.C. § 102(b)

Claim 1

After review of Appellants' and the Examiner's respective positions, we AFFIRM the Examiner's rejection of representative claim 1 for the reasons presented by the Examiner. We add the following for emphasis.

Both the Examiner and Appellants acknowledge claim 1 is directed to tooling for use in forming laminated thermoplastic parts from a layup of laminate plies placed on the tooling. Ans. 2; App. Br. 3.

The Examiner found Suriano's tooling F1 anticipates the subject matter of claim 1 because it has a structure comprising a rigid body having first and second ends, the body including a recessed area and the first and second ends of the rigid body extending beyond the recessed area. Final Act. 2; Suriano Figures 3, 5. The Examiner determined Suriano's tooling is structurally capable of use as claimed and that the recitation of intended use in the claim does not differentiate the claimed tooling from Suriano's tooling.² Final Act. 2.

Appellants argue Suriano does not disclose a first length of the second end of the claimed tooling is greater than or equal to a second length of a consolidation station—a separate apparatus—through which the tooling is configured to pass during operation of a continuous compression molding line. App. Br. 7. That is, Appellants argue that Suriano does not disclose

² We note Appellants agree that an apparatus claim containing a recitation of intended must be directed to an apparatus that is structurally distinct from the prior art. App. Br. 6.

the relative relationship between the length of the second end and the length of the consolidation station. *Id.* at 7–8.

We find these arguments unavailing for the reasons provided by the Examiner. As noted by the Examiner, claim 1 is directed to a tooling. Ans. 2–3. The Examiner also notes that the consolidation station recited in the claim is not a part of the claimed tooling. *Id.* at 3. Instead, the claim language reciting the relationship of the tooling to a consolidation station represents a statement of intended use of the tooling which does not limit the claim because it merely defines a context in which the tooling is used.³ Final Act. 2–3; Ans. 4; *see Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003) (“An intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates.”).

The Examiner found that Suriano’s tooling F1 meets the structure of the claimed tooling. Final Act. 2; Ans. 3; Suriano Figures 3, 5. Appellants have not adequately explained how the length relationship recited in claim 1

³ The claim language reciting the relationship between the length of the tooling’s second end and the length of the consolidation statement was added by amendment for business reasons unrelated to patentability. *See* Amendment and Remarks dated May 6, 2015. According to page 7 of the Remarks, paragraphs 27–30 of the Specification provide support for the amendments. The Remarks, however, do not explain how these portions of the Specification support the added language reciting the relationship between the length of the tooling’s second end and the length of the consolidation station in claim 1 as well as the lengths relationships described in claims 11, 28, 31, and 32. This lack of explanation could raise an issue of whether there is adequate written descriptive support under 35 U.S.C. § 112, first paragraph for the added claim language.

structurally distinguishes the claimed tooling from Suriano's tooling. Thus, Appellants have not shown error in the Examiner's finding of anticipation.

Claims 2–5, 7, 8, 10, 12–18, 20, 31, 32

Appellants present multiple arguments that Suriano does not disclose the subject matter of each of claims 2–5, 7, 8, 10, 12–18, 20, 31, and 32, with each claim comprising further limitations in conjunction with the structure described by claim 1. App. Br. 8–11. Appellants' arguments merely recite the limitations of these claims and assert that the Examiner erred in characterizing the limitation as intended use. *Id.* We rejected Appellant's arguments regarding intended use *supra*, and do so again here. We have considered these arguments and are unpersuaded. To the extent that Appellants rely on the arguments presented with respect to claim 1, we refer to our discussion above addressing those issues. To the extent the arguments merely point out the features of these claims, these arguments are considered to be nothing more than a general allegation of patentability and are not considered a separate patentability argument. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”).

Accordingly we affirm the Examiner's rejection of claims 1–20, 28, 29, 31, 32, and 35 under 35 U.S.C. § 102 (b) for the reasons presented by the Examiner and given above.

ORDER

The Examiner's prior art rejection of claims 1–20, 28, 29, 31, 32, and 35 under 35 U.S.C. § 102(b) is affirmed.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED